

AMERICAN RESOURCES INSURANCE CO., INC.

IBLA 87-424

Decided October 20, 1987

Appeal from a decision of the Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, forfeiting performance bond. TN 2183052.

Set aside and remanded.

1. Surface Mining Control and Reclamation Act of 1977: Bonds:
Generally -- Surface Mining Control and Reclamation Act of 1977:
Performance Bond or Deposit

Where the record is unclear whether the surety of a performance bond was served by certified mail with OSMRE's notice of determination to forfeit the bond and the surety on appeal expresses its intention to reclaim the permit area, OSMRE should properly re-serve its notice of determination in accordance with 30 CFR 800.50.

APPEARANCES: Gary G. Spangler, Esq., Knoxville, Tennessee, for appellant; P. A. Woods, Esq., Office of the Field Solicitor, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

American Resources Insurance Company, Inc., has appealed from a decision of the Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement (OSMRE), dated March 26, 1987, forfeiting a performance bond issued by the Kentucky Central Insurance Company. The record reveals that appellant is an affiliate of the issuer.

By notice dated February 19, 1987, OSMRE informed the Lueking Coal Company, the holder of permit No. 2183052, of its determination to forfeit the performance bond for this permit in the amount of \$93,000. The notice stated that this determination was the result of Lueking's failure to abate numerous violations. 1/ Lueking was served with this notice by certified

1/ OSMRE's decision stated that the forfeiture was caused by the failure to abate the following notices of violation and cessation orders. Notice of Violation Issued

<u>Cessation Order</u>	<u>Issued</u>		
86-91-095-012	11/22/85	86-91-095-002	02/10/86
86-91-095-002	02/14/86	86-91-095-004	04/17/86
86-91-095-007	05/05/86	86-91-095-007	07-08-86

mail, and Kentucky Central Insurance Company is shown thereon as having been sent a copy. The notice stated that Lueking could request an informal conference to discuss the conditions under which bond forfeiture could be avoided. Such a request must be made in writing, the notice provided, within 30 days of receipt, failing in which OSMRE would proceed with bond forfeiture. The record contains no request for an informal conference.

Following this notice, OSMRE issued on March 26, 1987, the decision on appeal. In this decision, OSMRE again recited the violations that Lueking had failed to abate and pointed out that no informal conference had been sought. Citing the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 (1982), and pertinent regulations at 30 CFR Part 800, OSMRE declared that Lueking's performance bond had been forfeited as of March 23, 1987. The bond was identified as a surety bond (No. BD-400424) in the amount of \$93,000.

Appellant filed a notice of appeal from the March 26, 1987 decision and thereafter submitted a statement of reasons consisting of the following sentence:

The appellant, American Resources Insurance Company, Inc., states that the reasons it has appealed the forfeiture of the performance bond of Lueking Coal Company is that the surety may exercise its right to reclaim, and, in fact, the surety is in the process of seeking bids as to the cost of reclamation at this time.

Although appellant's statement of reasons contains no citation to pertinent regulations, regulation 30 CFR 800.50(a) authorizes the course of action undertaken by appellant. That regulation states in part:

(a) If an operator refuses or is unable to conduct reclamation of an unabated violation * * * the regulatory authority shall take the following action to forfeit all or part of a bond or bonds for any permit area * * *:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to --

* * * * *

(ii) The regulatory authority may allow a surety to complete the reclamation plan * * * if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. [Emphasis added].

[1] The record is unclear as to why appellant did not respond to OSMRE's invitation to discuss forfeiture avoidance at an informal conference when it is now apparent that this is appellant's wish. Also less than clear is whether OSMRE served its February 19 notice of determination upon appellant by certified mail, return receipt requested, as required by the above-quoted regulation at (a)(1). No return receipt card is present in the record.

Because of the severity of bond forfeiture and because it is unclear that appellant received the process that it was due under the regulation, 2/ OSMRE is hereby directed to re-serve its notice of determination upon appellant as provided by 30 CFR 800.50(a). Upon receipt of such notice, appellant shall have 30 days within which to report to OSMRE its progress in obtaining bids to reclaim the permit area or otherwise satisfying 30 CFR 800.50(a)(2). OSMRE's decision forfeiting Lueking's performance bond is hereby set aside to allow the parties to comply with this course of action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decision of the Knoxville Field Office is set aside, and the case record is remanded for action consistent herewith.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge

2/ The record also reveals that OSMRE may have sent its notice of determination to appellant at an address no longer occupied by appellant. File documents attached to the Mar. 26, 1987, decision, which was sent certified mail, show that OSMRE first mailed its decision to Kentucky Central Insurance Co. at P.O. Box 36624, Birmingham, Alabama 35236. This decision was returned marked "Forwarding Order Expired." Thereafter, OSMRE re-served this decision on Kentucky Central Insurance Co. at Kincaid Towers, Lexington, Kentucky 40507.

